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REFLECTIONS

ON THE

CONTENTIONS AND DISORDER

OF THE

CORPORATION of CAMBRIDGE.



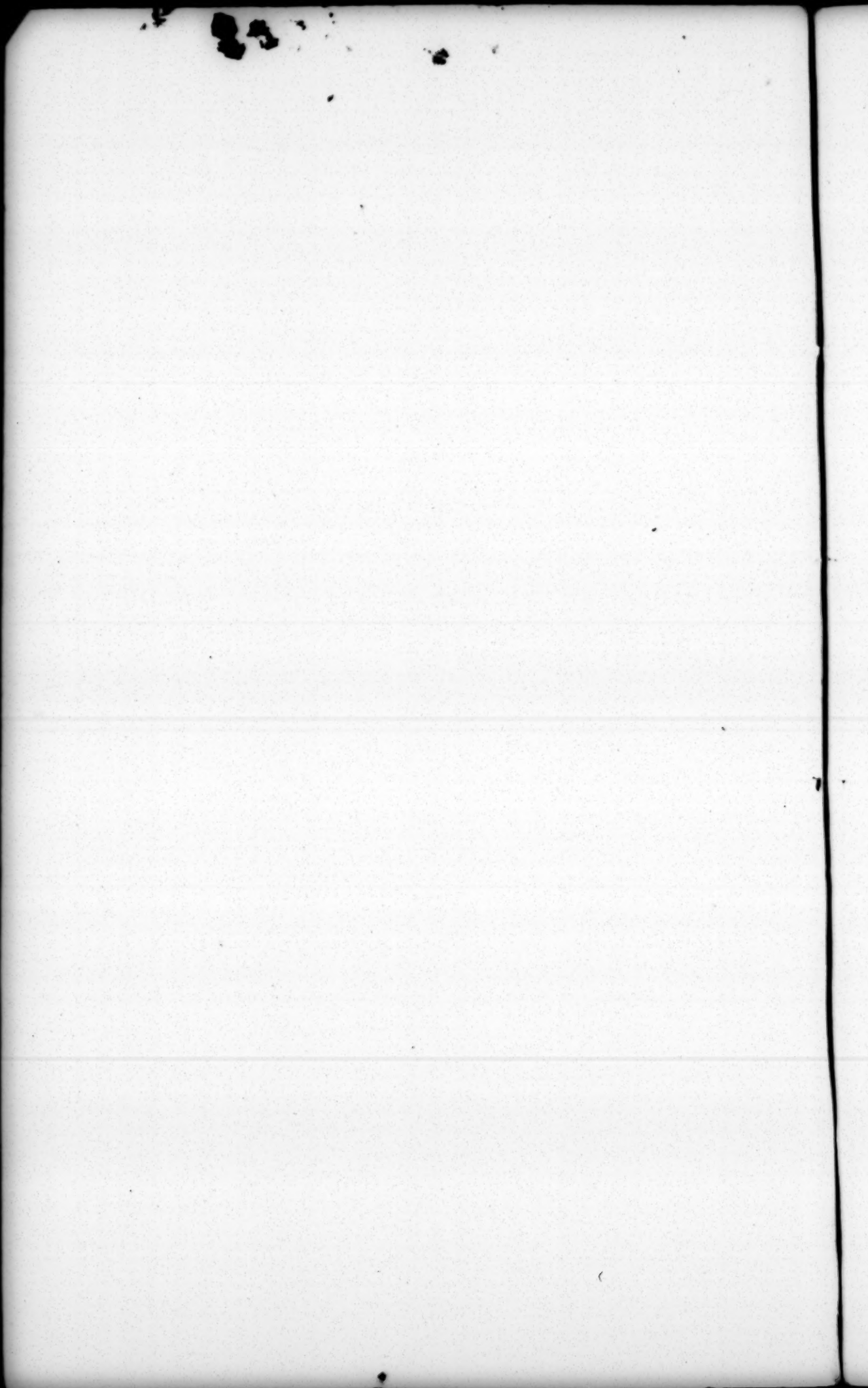
“Quem dixere Chaos; rudis indigestaque Moles?”

OVID

L O N D O N :

SOLD BY J. DEIGHTON, HOLBORN; AND ALL THE BOOKSELLERS
IN CAMBRIDGE.

M.DCC.LXXXIX.



REFLECTIONS, &c.

IT is both amusing and instructive to a reflecting mind, to take a view of the various subjects of contention and debate which exist in society. Wherever we go we find contending interests; measures embraced by some, and resisted by others, with as much seriousness as in either House of Parliament. These measures become the topic of enquiry and debate among those not materially interested, and this spirit of enquiry has a useful and instructive tendency, as it gives men a habit of weighing and comparing the several transactions and events of life; of discerning the motives of those who have been active in bringing about these events; and when possessed of these qualifications, they are less liable to become the dupes of artifice and error. The author of the following sheets having been obliged to pay some attention to the state and constitution of this Borough, has attempted to lay before the public some account of the controversies now agitated with so much earnestness.

The Corporation of Cambridge a few years ago was united and peaceful. The meetings of its members were in general friendly and harmonious, undisturbed by the strife and contention which prevails in the present day. Adhering to their ancient customs, they avoided those tumults, which among men unversed in the science of legislation, will generally arise in framing new rules of government. It is natural to enquire how men once so pacific, should become so involved in strife and debate. "*Who first seduced them to this foul revolt?*" Who it was, I do not take upon myself to decide; but certain it is, the author of so much mischief must ever meet with the disapprobation of every moderate man; his genius is much disparaged by the disturbances he has occasioned, and the poverty of his invention stands confessed, which, unable to exercise itself on a subject of a higher and more important nature, engages in conspiracies, stratagems and broils.

The dissensions which so unhappily divide the Borough, owe their origin to the spirit of innovation which inflamed the minds of some individuals, who deeming the ancient rules and orders of the Corporation too antiquated for men of their refinement to observe, have introduced a farrago of novelties under the pretence of improving and modernizing the laws of the Borough.

The continuance of these dissensions may be attributed to the impolicy of the laws themselves; and these two points form the subject of the following reflections.

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As to the point of innovation, I think it may be resolved into a general position, that the making new laws for the government of Borough Corporations is unnecessary and utterly useless, inasmuch as the support and maintenance of these Corporations is not attended with the smallest benefit to the community. Corporations are certainly now become obsolete, and however serviceable they may have been in the infancy of our constitution, as an asylum from feudal oppression, their utility has for a long time ceased, and they now are the lumber of our government, which ought to be cleared away by the legislature. But if the legislature will not take this under consideration, if this useless fabric must remain, surely it would be better that it should stand with all its marks of antiquity, than by attempting to improve what is in its very nature useless, to excite the ridicule of every spectator. If we descend to particulars, and just take a view of the Corporation of Cambridge, we surely shall be convinced of its inutility. In what shape does it confer consequence to the Town? Does it in any degree suppress vice, further justice, promote trade, or alleviate distress? I fear the very opposite is the case. To what purpose is it to disgrace the powers of legislation by framing laws which are not attended with the smallest good effect to the community? Some of the Members of this Corporation have spent the last three or four years in framing and introducing new regulations, as they pretend, for the better government of the town. How far these regulations have been attended with improvement, is best seen by the confusion prevailing at the present instant; a confusion which justifies one in suspecting that the authors of these innovations are not in the least actuated by

motives of public benefit. And is there any other motive that will justify the exercise of legislation? Ought a body politic to meet for any other purpose than public good? Is it not disgraceful to any civil institution, that it should be made the amusement of ambition, and its members the pander of cunning and artifice? Yet this, I fear, has been the case, and this has been the cause of the dissensions we lament. Individuals have been anxious to introduce themselves to persons of consequence and distinction, and not chusing for this purpose to rely on their own personal virtues or accomplishments, they conceive a Borough a proper offering to make in order to conciliate the esteem of the noble persons whose patronage they solicit. With these views they procure influence in the Borough; they mis-use this influence, and lose the approbation and support of the more respectable part of the Corporation; they then have recourse to altering the laws of the Corporation, that they may, by these alterations, be enabled to accomplish by stratagem, what they could not effect by fair and equitable means; these alterations draw forth the disapprobation and resentment of those who wish the ancient customs to be preserved inviolate, and hence come wars and fightings among us.

My next position was, that the impolicy of the new laws themselves occasioned the continuance of these dissensions. The policy of laws consists in their tendency to promote the peace and welfare of the community; their impolicy acts in an opposite direction; my censuring therefore the new corporate regulations as impolitic, is equal to saying, that they are productive of anarchy and discord, which every day's experience

experience proves. As it would be tedious to enter into a detail of the various trifling laws which have been introduced; I shall select one which will sufficiently discover the general drift of its authors, and will also show that it had not for its object, the smallest benefit to the public. If this be true, surely much blame is imputable to the authors of these laws, who may be accused of sporting with civil institutions, and reducing them to a mere instrument of power and patronage. The law to which I allude, was made to alter the manner of electing the Mayor and other officers of this Borough. The election had been made in one uniform and determinate mode for a century before its alteration; this mode was by far preferable to that which has been recently introduced, inasmuch as it is less partial, and more favourable to good order and unanimity, which, I think, will appear to any one who will take the trouble to examine the two modes. That which has had the sanction of one hundred years and upwards, and which I have presumed to call the most eligible, is prosecuted in the following manner. The Common Council, being 24 in number, write their names in small pieces of paper and lay them before the Mayor, the Mayor then nominates two Aldermen to inclose such names in balls of wax and put them in a box, the Mayor nominates an Alderman to take a name out of the box on the behalf of the Bench, and the Commonalty or Burgeſſes appoint a Burgeſſ to take another name out of the box; the two persons whose names are thus taken out, are to chuse twelve, which twelve are to chuse six more, and the twelve and six, amounting to eighteen, being sworn that they will make an impartial election, are then to elect a Mayor and other officers of the Borough. This scheme for
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electing the Mayor is simple, and I think we may say equitable; its principal object is the free and impartial election of the *two first electors*, and certainly this is an object of some importance, for as they are to nominate the rest of the electors, the event of the election must depend very much upon them; if the two first electors were open to the influence and sollicitation of any candidate for either of the offices, they might be induced to chuse such other persons as electors who should favour the designs of such candidate, and thus the election would be determined by address and influence. Elections by lot are of very ancient date; 'twas a method of electing pursued in several of the ancient Republics, and is often the best and safest method, because the most impartial. In the case before us, if the two first electors were always known before the election, any candidate, by engaging them in his interest, might get his friends nominated as electors, and so virtually elect himself or his partizans from year to year; on the contrary, when the two first are unknown, the election cannot so well be previously arranged, and if there are parties in the Corporation, each party has a chance of procuring the election of their friend.

It is this equal chance which some individuals of the Corporation have been endeavouring to destroy. Nor is it to be wondered at, with their views of politics, that they should make this attempt; a Borough with them is a species of merchandize, and therefore they rightly judge, that the price of their commodity will bear a proportion to the security and duration of possessing it; it was therefore necessary to their lucrative and ambitious scheme, to alter the mode of election in
such

such a manner as to command the annual election of such officers as will best sanction and promote their plan of operations. How far such measures are consonant with enlightened policy and general utility, must be left for those to decide who reason from sound and extensive principles, unwarpd by prejudice, and unperverted by interest. In May 1786, this mode of electing Mayor, which had been followed so many years, was rescinded, and another substituted in its stead, which destroyed the contingency in chusing the two first electors; by this mode it was directed that the Mayor should appoint one man, the Commonalty another,* these two should chuse twelve, and those twelve six, and the eighteen should chuse the Mayor. There are two points in which this mode varies from that above described. The first and most substantial difference is, that the two first electors are appointed, *not chosen by lot*, so that before the day of election, it is possible to know who the *two first* will be, and by insinuation and intrigue to direct their choice of the other electors. Another difference is, that by this mode the twelve and six are chosen out of the Commonalty at large, which gives a Corporation adventurer a greater chance of success, as he may procure his particular friends to be made freemen, and thro' their instrumentality sway the electors and carry their schemes into execution. This has been the case with the introducers of this last mode; unable to get the support of the older Members of the Corporation, they were obliged to make new freemen, who not being acquainted with the
ancient

* A Mayor may by this mode always appoint his successor; for if the Commonalty nominate as their elector, a man adverse to the Mayor's interest, he would most likely chuse nine of the electors equally adverse; yet the Mayor secures the election by having the casting vote. A striking feature this of impartiality!

ancient customs of the Corporation, entertained no respect for them and therefore easily adopted any new fangled scheme brought before them.

This mode of election recently introduced, has been reprobated by experience; it was framed in Edward the Third's reign, and we have reason to apprehend continued until Henry VIII. about that period, when men began to make some use of their judgments, the liability of the two first electors to be unduly influenced, was perceived and complained of: there are *† repeated examples* in the Corporation records, of confusion occasioned by this mode; indeed the transactions of many public days, from Henry the Eighth's time down to Elizabeth, are attended with recitals of the confusion arising by reason of the *unjust labouring** the two first electors. In the tenth of Elizabeth the mode which directs the names of the two first electors to be drawn out of a box was established, and has been continued with very little variation ever since, down to May 1786. We cannot help thinking this circumstance ought to have had greater weight when these modes of election underwent a legal investigation at Guildhall. The mode introduced in May 1786, is very much disapproved of by several of the
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† In the sixth of Elizabeth there is an entry in the Corporation books *enjoining* particular persons to form a new mode of election, in order to prevent the "DISORDERS AND CONTROVERSIES (these are the words in the entry) which had hitherto prevailed in the elections of Mayor. A little time after, there was power given to the Recorder to alter the mode framed in Edw. the Third's reign, or to substitute another in its stead. These two entries plainly shew the partiality and unsuitness of this mode was then felt and attempted to be removed. These entries are in fol. 213 and 239 of the large Corporation book.

*** This is the term in the Corporation book, which I suppose means *Influence*.

Members of the Corporation, on account of its partiality; a suit was therefore instituted in the King's Bench, to ascertain the proper and legal mode of electing a Mayor. On the part of those who wished the establishment of that mode followed so many years previous to the innovation made in 1786, it was urged, that the mode they contended for had received the sanction of more than a century; was in its nature and construction more calculated for an impartial election than that set up to supersede it, and ought to be preferred to it, because that mode had been reprobated by experience, and the records of the Corporation now bore testimony of the confusion it had occasioned; it was hoped therefore the revival of ancient errors would not be countenanced by a Court of Judicature.* But however, neither the argument of the fairness and convenience of the old mode, nor of the inconvenience and disorder which had resulted, and which must necessarily result from the mode recently introduced, made much impression on the learned Judge who tried the cause; he seemed to be of opinion, that a Body Corporate having the powers of legislation, might make any laws without regarding their convenience, if these laws are not repugnant to the laws of the land. Indeed! And will nothing but a direct opposition to, and open violation of the laws of the land, bring down the censure of a Court of Judicature upon Corporate laws? When they tend to promote feuds and animosities in a Borough, is there no remedial maxim in our laws to discountenance such evils? The man of intrigue may then convert all his whims and caprices into the

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* There were other points upon which the cause rested, besides this argument *AB INCONVENIENTE*; the points are not yet determined, but remain to be argued before the Judges next term.

form of laws, and however troublesome, inforce the execution of them, provided they do not make a *direct* attack upon the letter of the law. These things may appear strange, and yet it is the opinion of the learned Judge, whose profound knowledge of law is universally acknowledged, and also of several gentlemen eminent at the bar, that the inconvenience of a bye law will not invalidate it.

To those who know how incapable Borough Corporations are to govern themselves, this doctrine will not, perhaps, be much approved of. It may be thought more reasonable that Corporation laws and ordinances, framed often for sinister purposes, should undergo the more sober revision of a superior Court. According to the opinions of many eminent lawyers, the Court of King's Bench have a right to controul the acts of a Corporation, and the Judges of that Court have exercised this right, not only where the acts were *illegal*, but where they were unreasonable.

There is a case in Lord Raymond's Reports* where a Corporation made a bye law, that their steward (who was annually chosen) should provide a dinner on Michaelmas-day for the Master Wardens and Assistants, under the penalty of 10*l*. one of the stewards refused to comply with this bye law, and provided no dinner; an action was brought against him to recover the penalty of 10*l*. the steward contended the bye law creating the penalty, was a bad bye law; the Judges of the King's Bench thought the bye law unreasonable, and in delivering their opinions, said, "*that Members of Corporations are not bound to perform bye Laws unless they are*

* Vol. i. p. 113.

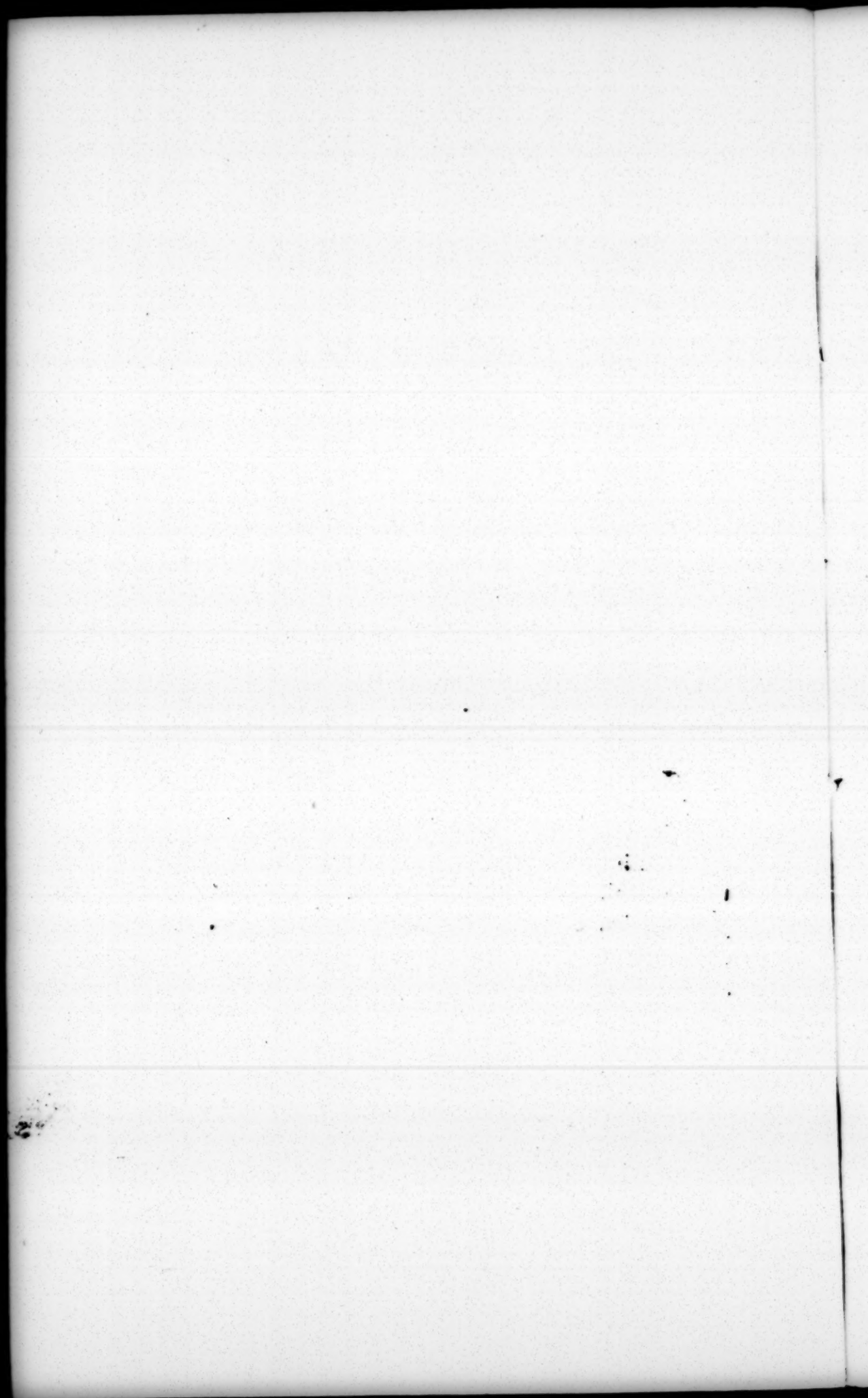
"are reasonable, and the reasonableness of them is EXAMINABLE by the Judges." Mr. Justice Wilmot said also in a later case,* that "he thought the Court of King's Bench ought to take care that persons empowered to make bye laws exerted their power in a reasonable manner;" he further observed, "*the true test of all bye laws is the apparent good of the Corporation.*"

From these opinions one should be apt to conclude, that a bye law, introduced merely for private views, and in its nature tending to confusion, could not meet with the support of a Court of Judicature; and indeed, notwithstanding all the vague reports which have been circulated, there is reason to hope, that the old mode of electing the Mayor of Cambridge, which has been followed so many years previous to the alteration in 1786, may yet be confirmed; reason and fairness are in its favour, and in an English Court of Justice it is to be hoped these will be powerful advocates. Let the event be what it may, surely those who are contending to preserve long established usages, in opposition to novelties which are not recommended by the smallest improvement to society, deserve the good opinion of their fellow citizens; and if their efforts prove unsuccessful, they may justly console themselves by observing in the language of a celebrated author,

" 'Tis not in mortals to command success,
" But we'll do more——deserve it."

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* King v. Spencer.



A few Thoughts on the Inutility of Corporations.

IN the foregoing hints I have endeavoured to point out the comparative merits of two modes of electing the Mayor of Cambridge, and I have done this upon the idea, that if a useless institution must be suffered to exist, the laws and regulations made in support of that institution, ought to be the least pernicious possible to the community. I have ventured to assert that *Corporations are useless, and am now going to offer a few thoughts in proof of this assertion.

It sometimes happens in politics, that those regulations which at first promote the advantage of a community, at last retard its progress to perfection. A political body, like the natural one, requires supplies adapted to its growth, and the undigested rules which suited its infancy, will not accord with its maturity.

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* Borough Corporations alone are here meant.

This observation has perhaps occurred with those who are conversant with the laws of this country, where the quaint maxims of antiquity are sometimes so inseparably blended with modern improvements, that it would be dangerous to disunite them; but where this disunion would be attended with no mischief, what reason can be given that it should not be effected? That the incorporation of Boroughs has been attended with important advantages, every one who is acquainted with the history of former times will allow. It very much conduced to the invention and increase of arts and industry, and perhaps tended in a great measure to hasten the decline of the feudal government, which formerly oppressed all the nations in Europe.

The history of the feudal policy informs us, that the lands of this kingdom, and indeed most other kingdoms of Europe, were held of a few great Lords, called Feudal Barons; at the time when the feudal government was at its height, the usurpation of these Barons became unbounded and intolerable;* they reduced the great body of the people into a state of actual servitude, and the spirit of industry was checked by the narrow and absurd maxims of martial aristocracy. In short, the spirit of the times then led men to think of nothing but war; their very amusements were of a martial nature: The useful arts were entirely neglected, and the powers of invention lay dormant. Nor is this to be wondered at, when we consider that those who applied themselves to the arts were stigmatized with cowardice, and always liable to interruption in their peaceful employments, by being called

* Vide Dr. Robertson's Hist. of Charles V. vol. 2.

called forth to bear arms in the service of some military Lord. To prevent these interruptions, and to encourage men in the prosecution of the peaceful arts of life, was the object of incorporating towns.

In the eleventh century, the Italian cities which stand distinguished in history for their application to commerce, were formed into bodies politic, under the government of laws established by common consent. Not long after, the same kind of institutions were introduced into France, and we are told that Lewis le Gros formed many towns into Corporations, and suffered them to be governed by their own Magistrates. The same regulations gradually extended to our own country, and had the good effect of damping the furious tyranny of the Barons. The people being formed into communities, acquired a taste for the peaceful arts, and pleased with the charms of a social and domestic life, they grew much averse to inlisting under the banners of a military tyrant ; the turbulent spirit of men began to subside, and the sensibilities of the human mind gradually awakening, men soon preferred the comforts of a regular life to perpetual hostilities.

Thus have I endeavoured briefly to point out the good effects which formerly followed from the Corporations ; they were instituted for the suppression of turbulence and disorder, and for the same reason ought now to be abolished. Political and civil institutions are for the support and improvement of domestic and social happiness, and all which have not directly or indirectly a tendency to this point, are incumbrances,
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and ought to be removed. How Corporations tend to increafe the happiness of this nation in any degree, it surely would be difficult to point out. They were at first formed for the protection of towns and cities from the incursions of fierce and warlike Barons; they formed a boundary between arts and arms; but now the spirit of the times is altered, we are in no danger of being oppressed or interrupted in our employments, by any Nobleman of this country, and the general laws of this kingdom so amply provide us with redress for every real injury, that we have no occasion to appeal to inferior jurisdictions. As to the conservation of the Peace in Boroughs, the Mayor very often takes but a small part in that, nor is it necessary that he should, as there are generally in most towns, a sufficient number of well informed men, who are better qualified for the office of a Justice of the Peace than the Mayor of a Corporation; especially as it sometimes happens that a Mayor knows no more of the laws of his country than the mace which is carried before him. It is the absolute inutility of Corporations which has brought them into such ridicule; every wit has levelled his talent at the Right Worshipful the Mayor and Aldermen, every songster will entertain you with some pleasantry on bodies politic. However amusing this may be, one cannot help lamenting, that any part of the British Constitution should be so thoroughly contemptible, as to become the sport of every man of humour who wishes to utter a *bon mot* over the convivial bowl.

In short, Borough Corporations seem in every point of view utterly useless. In Trading Corporations the interests of commerce are promoted; in Literary Corporations

porations the education of youth and advancement of science is facilitated ; but these Borough Corporations have no determinate object, they are the mere playthings of ambition, a kind of apparatus upon which enterprising men try their experiments for the attainment of wealth and power. Happy would it be for the peace of Boroughs, if these useless institutions were abolished ; there would not then be so much scope for the arts of duplicity, intrigue and insinuation ; nor would there exist so many incentives to passion and revenge : The minds of men disengaged from such useless subjects, might fix upon something more instructive and important, and society at large, if not much improved by these regulations, would certainly be freed from those disturbances which in most Corporate towns are too prevalent.

F I N I S.

